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Proposed Attorneys for Debtors

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

In re:	Case No.: 16-30296-DM
BLUE EARTH, INC.,	Chapter 11

Debtor.	
In re:	Case No.: 16-30297-DM
BLUE EARTH TECH, INC.,	Chapter 11

Debtor.	<b>DEBTORS' <i>EX PARTE</i> APPLICATION FOR ORDER AUTHORIZING JOINT ADMINISTRATION PURSUANT TO 11 U.S.C. § 105(a) AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 1015(b)</b>
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[No hearing requested]

Blue Earth, Inc., and Blue Earth Tech, Inc. the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”), submit this *ex parte* application (the “**Application**”) for an order authorizing joint administration of their respective chapter 11 cases pursuant to section 105(a) of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”). The Debtors are “affiliates” for purposes of section 101(2) of the Bankruptcy Code.

This Application is based on the Memorandum of Points and Authorities and *Declaration of G. Robert Powell in Support of First Day Motions* filed concurrently herewith, and any other

evidence properly before the Court. In support of the Motion, the Debtors respectfully represent the following:

**I.**

**JURISDICTION**

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this chapter 11 case is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

**II.**

**SUMMARY OF RELIEF SOUGHT**

By this Application, the Debtors request that the Court authorize the joint administration of the Debtors' chapter 11 cases and approve the following procedures:

- the Clerk of Court shall maintain a joint pleadings docket under the case number assigned to Blue Earth, Inc., which shall be designated as the single pleadings docket for all pleadings relating to any of the Debtors' chapter 11 cases;
- the captions of the Debtors' cases shall be modified to reflect the joint administration of these chapter 11 cases, in the form set forth on **Exhibit A** hereto;
- the claims registers in these cases shall be maintained separately for each Debtor entity by the Clerk of Court;
- the Debtors and other parties in interest shall be authorized, but not required, to combine notices to the Debtors' creditors; and
- the relief requested herein is limited to joint administration. Nothing contained in this Application is intended to compel substantive consolidation of the Debtors' estates. The requested relief will thus not prejudice any entity's substantive rights and will result in no conflicts. If substantive consolidation of some or all of the estates is later warranted, the Debtors will move the Court separately for such relief.

A proposed form of Order is attached hereto as **Exhibit B**.

**III.**

**MOTION**

**A. General Background**

On the date hereof (the "**Petition Date**"), the Debtors each filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**"). The Debtors

1 continue to operate and manage their affairs as debtors in possession pursuant to sections 1107(a)  
2 and 1108 of the Bankruptcy Code. No trustee, examiner, or committee has been appointed in these  
3 chapter 11 cases.

4 The factual background regarding the Debtors, including their current and historical business  
5 operations and the events precipitating the chapter 11 filing, is set forth in detail in the *Declaration*  
6 *of G. Robert Powell in Support of First Day Motions* (the “**First Day Declaration**”) filed  
7 concurrently herewith and fully incorporated herein by reference.

8 **IV.**

9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 **A. Joint Administration will Eliminate Duplication**  
11 **of Effort and Promote Judicial Economy**

12 Several bases warrant the joint administration of the Debtors’ cases pursuant to section  
13 105(a) of the Bankruptcy Code. First, joint administration will expedite the administration of the  
14 Debtors’ cases and reduce administrative expense without prejudicing creditors’ substantive  
15 rights. The Debtors are affiliated companies. Hence, numerous motions filed in these cases will  
16 relate to both Debtors. Absent joint administration, parties will be required to file several sets of  
17 papers that will often be identical, apart from the captions, and creditors will receive multiple  
18 copies of such papers. Joint administration will allow creditors to receive notice of all matters  
19 relating to the Debtors, thereby ensuring that creditors are informed of matters potentially  
20 affecting their claims, without the burden of unnecessary and expensive duplication.

21 Second, because each creditor may file a claim against a particular Debtor, joint  
22 administration will not adversely impact any creditors’ rights. In fact, the cost savings of joint  
23 administration will benefit all creditors by increasing the amounts ultimately available for  
24 distribution.

25 Third, joint administration will relieve the Court of the burden of entering duplicative  
26 orders and maintaining duplicative files. Similarly, joint administration will simplify the  
27 administrative burdens of the Office of the United States Trustee’s supervision of these chapter  
28 11 cases.

Accordingly, the Debtors submit that joint administration of these chapter 11 cases is in the best interests of the Debtors' respective estates. Joint administration will eliminate unnecessary and expensive duplication of effort by the Debtors, their professionals, their creditors, parties in interest, and this Court.

**B. Legal Authority**

Bankruptcy Rule 1015(b) authorizes joint administration and provides as follows:

If a joint petition of two or more petitions are pending in the same court by or against . . . a debtor and an affiliate, the court may order a joint administration of the estates.

Fed. R. Bankr. P. 1015(b). Section 101(2) of the Bankruptcy Code defines "affiliate" to include an entity in which 20% or more of the outstanding securities of one entity are owned or controlled by the other entity:

[A]ffiliate means—

(A) entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities—

(i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or

(ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;

(B) corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor, or by an entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities—

(i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or

(ii) solely to secure a debt, if such entity has not in fact exercised such power to vote.

11 U.S.C. §§ 101(2)(A)-101(2)(B).

Blue Earth Tech, Inc. is a wholly-owned subsidiary of Blue Earth, Inc. Because the Debtors are clearly “affiliates,” as defined above, the Court may order the joint administration of the Debtors’ estates.

**WHEREFORE**, each of the Debtors respectfully requests that the Court enter an order (i) authorizing the joint administration of the Debtors’ chapter 11 cases; (ii) authorizing the use of a combined caption, in the form set forth on Exhibit A to the Motion; (iii) authorizing the Clerk of Court to maintain a pleadings docket under the case number assigned to Blue Earth, Inc. which shall be designated as the single pleadings docket for all pleadings relating to any of the Debtors’ chapter 11 cases; (iv) authorizing, but not requiring, the Debtors and other parties in interest to combine notices to the Debtors’ creditors; and (v) granting such other and further relief as the Court deems appropriate.

Dated: March 21, 2016

PACHULSKI STANG ZIEHL & JONES LLP

By: /s/ John W. Lucas

Jeffrey N. Pomerantz

Debra I. Grassgreen

John W. Lucas

Malhar S. Pagay

Proposed Attorneys for Debtors

**EXHIBIT A**

**UNITED STATES BANKRUPTCY COURT**

**NORTHERN DISTRICT OF CALIFORNIA**

**SAN FRANCISCO DIVISION**

In re:

BLUE EARTH, INC., et al.,<sup>1</sup>

Debtors.

Case No.: 16-30296-DM

Chapter 11

(Jointly Administered)

<sup>1</sup> The last four digits of each of the Debtors' tax identification numbers are Blue Earth, Inc. (1496) and Blue Earth Tech, Inc. (0269). The location of the Debtors' headquarters and service address is 235 Pine Street, Suite 1100, San Francisco, California 94104.

**EXHIBIT B**

(Proposed Order)

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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

In re:	Case No.: 16-30296-DM
BLUE EARTH, INC.,	Chapter 11

Debtor.	
In re:	Case No.: 16-30297-DM
BLUE EARTH TECH, INC.,	Chapter 11

Debtor.	<b>ORDER AUTHORIZING JOINT ADMINISTRATION PURSUANT TO 11 U.S.C. § 105(a) AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 1015(b)</b>
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[No hearing requested]

**THIS MATTER CAME BEFORE THE COURT** to consider the Ex Parte Application For Order Authorizing Joint Administration Pursuant To 11 U.S.C. § 105(a) And Federal Rule Of Bankruptcy Procedure 1015(b) (the “Application”), filed by Blue Earth, Inc. and Blue Earth Tech, Inc., debtors and debtors in possession herein (collectively, the “Debtors”).<sup>1</sup> Based on the arguments made in the Application, and the pleadings and documents on file in these cases, this Court finds that notice of the Application is not required; no objections to the Application were filed or all objections were resolved consensually; and other good cause appearing therefore,

**IT IS THEREFORE ORDERED THAT:**

1. The Application is granted in its entirety.

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings set forth in the Motion.



2. The chapter 11 cases of the Debtors shall be jointly administered.

3. The Clerk of the Court shall maintain a pleadings docket under the case number assigned to the Debtors, which shall be designated as the single pleadings docket for all pleadings with respect to all of the Debtors' chapter 11 cases.

4. All pleadings filed in the Debtors' cases shall use a combined caption (including a footnote setting forth the other debtor entities) in the form substantially as follows:

**UNITED STATES BANKRUPTCY COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

In re:

BLUE EARTH, INC., et al.,<sup>2</sup>

Debtors.

Case No.: 16-30296-DM

Chapter 11

(Jointly Administered)

**\*\*\*END OF ORDER\*\***

<sup>2</sup> The last four digits of each of the Debtors' tax identification numbers are Blue Earth, Inc. (1496) and Blue Earth Tech, Inc. (0269). The location of the Debtors' headquarters and service address is 235 Pine Street, Suite 1100, San Francisco, California 94104.